IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Smt. Sudha Karwa
Vs.
Life Insurance Corporation of India & Anr.

S.B. CIVIL WRIT PETITION NO.5445/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 15th December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.N.M. Lodha, Additional Advocate General.
Mr.J.L. Purohit, Advocate for the respondents.

BY THE COURT

This writ petition has been filed by the petitioner Smt. Sudah Karwa with the prayer that the order dated 21st

December, 2002 passed by the respondents refusing to provide her compassionate appointment be quashed and set aside and the respondents be directed to provide compassionate appointment to her.

The case of the petitioner is that she was married to late Shri Satya Narayan resident of Sujangarh and lived with him as his wife. A son named Ashish was born out of this wedlock. The petitioner's late husband Shri Satya Narayan was serving the respondent Corporation as Assistant Administrative Officer in the branch office at Sujangarh. While serving the respondent-corporation he unfortunately died on 22/23rd May, 2002. The respondent corporation has adopted Central Government (Recruitment of Dependent of Government Servants dying while in service) Rules. The petitioner was having qualification of M.S. B.Ed. but she is unemployed and therefore she moved an application to the respondents on 11th June, 2002 with the request that she be provided compassionate appointment. She also submitted a reminder cum representation dated 09th August, 2002. The respondents

however by their communication dated 21st December, 2002 refused to provide compassionate appointment to the petitioner.

I have heard Mr.N.M. Lohda, learned Additional Advocate General and Mr.J.L. Purohit, learned counsel for the respondents and perused the record.

Learned counsel for the petitioner argued that the order dated 21st December, 2002 is ex facie, illegal and arbitrary. This order does not give any reason as to why compassionate appointment cannot be provided to the petitioner. Rule 2(f) of the aforesaid Rules makes it clear that a family member who was dependent upon the deceased was entitled for appointment on compassionate ground and when the petitioner had submitted her application within stipulated time, there was no reason not to consider and grant her compassionate appointment more particularly when she was fully eligible. It has been argued that the petitioner was prepared to serve on any post but not necessarily on the post held by her late

husband. It is therefore prayed that the writ petition be allowed in terms of the prayer contained therein.

On the other hand, Shri J.L. Purohit, learned counsel appearing for the respondents argued that the petitioner has concealed the material fact from this Court that there was a litigation pending between the petitioner and her late husband under Sections 11 and 13 of the Hindu Marriage Act for grant of divorce. She also concealed the fact that late Shri Satya Narayan has executed a will whereby he dis-entitled the petitioner from getting any compassionate appointment if he died while serving the respondents. Shri Satya Narayan expired on 23rd May, 2002 and he had executed a will on 16th November, 1995 in which he specifically mentioned that in case he died no one from his relative or successor be given compassionate appointment. In the will it was mentioned that although he married with the petitioner on 30th April, 1992 but the petitioner had concealed from him the fact that she was already married from before with some other person and therefore this was a void marriage. A copy of the will dated

16th November, 1995 has been placed on record with the reply of the respondents. In fact the respondents have placed on record the copy of the divorce petition filed against the petitioner on the ground of the marriage being void. In para 7 of the said petition it has been specifically mentioned that when the marriage was solemnized on 30th April, 1992, the petition was already married therefore by virtue of Section 5(1) read with Section 11 of the Hindu Marriage Act such a marriage was void. Copy of the order dated 09th June, 2005 passed by Judicial Magistrate, Sujangarh under Section 125 Cr.P.C. has also been placed on record to show that the petitioner secured divorce from her earlier husband on 09th September, 1992, that is, much after the solemnization of her marriage with late Shri Satya Narayan.

Having considered the arguments advanced by learned counsel for the parties, I find that the refusal by the respondents to provide compassionate appointment to the petitioner cannot be said to be without justification. Even if a formal declaration from the court of law that marriage was void

is held to be not necessary, the fact remains that this would none the less be a relevant consideration for the respondents to decide whether or not to give compassionate appointment to some one who was already married when she contacted another marriage with late Shri Satya Narayan. The fact that the petitioner secured divorce from her earlier husband five months after the date of her marriage with late Shri Satya Narayan is born out from the order dated 04th June, 1995 whereby her application for maintenance under Section 125 Cr.P.C. was rejected. Moreover duly registered will executed by late Shri Satya Narayan wherein he held the petitioner completely dis-entitled to compassionate appointment cannot be said to be an irrelevant factum to be taken into consideration to deny the compassionate appointment.

As a result of the aforesaid discussion, I do not find any merit in the writ petition. This writ petition is accordingly dismissed with no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC.